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Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the present report, submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with General Assembly resolution 62/152.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report focuses on responsibility for human rights violations against defenders by non-State actors. The introductory part recalls that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States and human rights defenders but to all individuals, groups and organs of society.

The first part of the report identifies armed groups, private corporations, individuals and the media as the categories of non-State actors to be addressed by the Special Rapporteur in the framework of the report as well as the types of violations they commit. The Special Rapporteur then addresses the scope of their responsibility for violations of the rights of defenders, including the corporate responsibility to respect human rights.

The second part of the report surveys States' obligations under international law with respect to human rights violations against defenders by non-State actors. The Special Rapporteur argues that a State's duties to respect and protect human rights include a duty to protect defenders against human rights violations by third parties. State responsibility can therefore be engaged for violations by non-State actors in specific situations. Furthermore, a State's obligation to provide victims of human rights violations with an effective remedy is also reaffirmed.

The report concludes with recommendations to States and non-State actors aimed at ensuring that they fulfil their obligations and responsibilities.

Contents

I. Introduction ....

II. Human rights violations by non-State actors ....

A. Types of perpetrators and patterns of violations ....

B. Responsibility of non-State actors to respect the rights of human rights defenders ....

III. The responsibility of States for human rights violations by non-State actors ....

A. State responsibility for acts of non-State actors under international law ....

B. Implementing the right to an effective remedy ....

IV. Conclusions and recommendations ....

I. Introduction

1. The Special Rapporteur has, on various occasions, expressed her concern at the continued targeting of human rights defenders by non-State actors. She has therefore decided to devote her thematic report to the General Assembly to violations committed against defenders by non-State actors and their consequences for the full enjoyment of rights by defenders. The term "non-State actor" encompasses people, organizations, groups and corporations not composed of State agents or not being State organs.

2. Although States bear the primary responsibility for protecting human rights defenders, it is necessary to recall that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States and human rights defenders but to all individuals, groups and organs of society. Article 10 of the Declaration states that "No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms". Non-State actors are thus included and therefore have a responsibility to promote and respect the rights enshrined in the Declaration and, consequently, the rights of human rights defenders.

3. The report will first identify the non-State actors most commonly involved in violations of the rights of defenders and the types of violations they commit. The Special Rapporteur will then address the responsibility of non-State actors to respect the rights of defenders. States' obligations to protect the rights of defenders against abuses by third parties will also be discussed.

II. Human rights violations by non-State actors

A. Types of perpetrators and patterns of violations

4. The present report does not aim to identify all categories of non-State actors involved in human rights abuses against defenders, as this group is too broad and diverse. Rather, it is the intent of the Special Rapporteur to highlight the types of violations they commit and their responsibilities. The report will therefore focus on armed groups, private corporations, individuals and the media, as these are the non-State actors most regularly accused of violating the rights of defenders. Conclusions and recommendations are addressed to various stakeholders, as well as to all non-State actors, including those not discussed in the report.

1. Armed groups

5. This category of perpetrators notably includes rebels, paramilitaries, mercenaries and militias. This list is not exhaustive and does not exclusively include armed groups fighting against Governments in the context of an international or non-international armed conflict, as many violations committed by armed non-State actors can also occur during peaceful times and during states of emergency.

6. During times of armed conflict or states of emergency, human rights defenders are at great risk of being targeted by non-State armed groups. Defenders denouncing impunity and violations committed by armed groups are harassed and, consequently,

Page
3
3
3
6
8
9
12
13

work in a state of fear. In particular, their mental and physical integrity is at risk, as they often live in regions under the control of non-State armed groups or wherein these groups operate. In addition to being threatened and harassed by militias, warlords and other armed groups, women human rights defenders are, in addition, often subjected to rape and other forms of sexual violence because of their work. Human rights defenders helping victims to access justice for violations of human rights law or international humanitarian law, either locally or before regional or international tribunals such as the International Criminal Court, are also regularly subjected to threats, violence and harassment. In particular, the Special Rapporteur has received information about lawyers receiving death threats because of their work in defence of victims of international crimes. Humanitarian workers are also targeted by non-State armed groups and thus prevented from providing humanitarian assistance to victims of armed conflicts. Furthermore, in the context of civil conflict, paramilitaries often attempt to stigmatize the work of human rights defenders and legitimize campaigns of violence against them by alleging that they are associated with armed groups or "terrorists". In such cases, it is vital that the Government publicly reaffirm the importance of the work carried out by human rights defenders and denounce any attempts at its delegitimization or stigmatization.

7. Defenders are also the victims of attacks by non-State actors, in time of peace. Evidence shows that, in certain countries, paramilitary groups make death threats against human rights defenders who advocate land rights and denounce the granting of mining concessions. Several leaders of communities fighting for economic, social and cultural rights have also been killed, allegedly by paramilitaries.

8. Also of concern are attacks committed against defenders by non-State armed groups which are directly or indirectly instigated by States. Information received by the Special Rapporteur indicates that certain States have allegedly been involved in violations committed against defenders by providing non-State armed groups with weapons and/or logistical support or by condoning their actions, explicitly or implicitly. In certain cases, States have also used non-State armed groups to commit human rights violations against defenders; such violations include killings. In one such case, the Special Rapporteur was "notably disturbed to learn that some information illegally obtained by DAS [Department of National Security] had been transmitted to paramilitary groups in the form of a hit list of defenders, which had led to the killing of four human rights defenders" (A/HRC/13/22/Add.3, para. 135). In certain regions, although States claimed that certain armed groups had been demobilized, former members of those groups were allegedly still operating under the supervision of the central authorities. Information received by the Special Rapporteur indicates that in certain instances, former members of paramilitaries continue to threaten and attack human rights defenders.

2. National and transnational corporations

9. A number of human rights violations against human rights defenders are committed by private corporations, a category that should be understood as consisting of companies, whether national or transnational, not owned or operated by Governments.[1] Private corporations have allegedly been impeding the activities of defenders working, inter alia, on labour rights, the exploitation of natural resources, the rights of indigenous peoples and minorities.

[1] The terms "companies" and "corporations" are used interchangeably in the present report.

10. Private companies operating in certain mineral-rich countries have also indirectly been involved in violations of the rights of human rights defenders. The Special Rapporteur has received information about instances in which security guards employed by oil and mining companies have allegedly threatened to kill, harassed and attacked human rights defenders protesting against the perceived negative impact of the companies' activities on the enjoyment of human rights by local communities.

11. In several cases brought to the attention of the Special Rapporteur, it has been alleged that local authorities had colluded with the private sector or that private companies had aided and abetted the commission of violations against human rights defenders.

12. The former Special Representative had received information on numerous instances in which "employers collude among themselves and with the local labour department and immigration authorities against workers who raise labour rights concerns" (E/CN.4/2004/94/Add.1, paras. 61-69). Private companies have also reportedly provided information to the State leading to the conviction of several defenders who had been calling for democratic reforms through the Internet. In one particular case, a Web-search engine company was sued by defenders for reportedly having aided and abetted State violations against them. A private settlement was agreed upon by the parties, but new lawsuits have since been filed against the same company by different plaintiffs.[2]

3. Other types of non-State actors

13. The Special Rapporteur has received information about numerous threats made against defenders through anonymous telephone calls, text messages, letters or raids on premises committed by isolated individuals. Several defenders have received death threats through text messages following their involvement in human rights activities at the local level or abroad.

14. In the context of the defence of economic, social and cultural rights, defenders are also being attacked by individuals such as landowners. In one such instance, the leader of a group of indigenous people was shot by gunmen reportedly employed by a local landowner, who wounded him in the head, shoulders and right arm with a 12-calibre rifle.[3] Individual armed assailants have also been involved in attacks against trade unionists, peasants' leaders and campesinos (farmers or farm workers).

15. In certain countries, attacks have been perpetrated against defenders supporting indigenous communities affected by gold and silver mining by transnational companies. The Special Rapporteur received information about individuals attacking defenders who were demonstrating against violations of the rights of indigenous communities as a result of mining activities.

16. In addition, the information received indicates that community leaders and faith-based groups are increasingly resorting to the stigmatization of, and attacks against, defenders working on issues such as the rights of lesbian, gay, bisexual and transgender persons (A/HRC/4/37/Add.2, para. 32), violence against women and domestic violence. In numerous instances, defenders have been threatened with

[2] *Xiaoning et al v. Yahoo! Inc et al* (California Northern District Court, cased filed on 18 April 2007) (joint stipulation of dismissal following a private settlement between parties).

[3] See A/HRC/4/37/Add.1, paras. 85-100, and A/HRC/4/37/Add.2, para. 16.

ostracism or pressured to stop their work in defence of human rights. Furthermore, the information received shows that women human rights defenders working in the area of domestic violence and other types of violence against women are often pressured by the family members of victims or threatened by the perpetrators or their own family members to drop cases.[4]

The role of the media

17. A number of cases brought to the attention of the Special Rapporteur indicate that the media are also involved in violations committed against human rights defenders, notably in relation to violations of their right to privacy. In certain States, human rights defenders have been subjected to denigration campaigns in the press (although sometimes the perpetrators were State-owned outlets). The Special Rapporteur strongly condemns such stigmatization, which often causes defenders to be portrayed as "troublemakers" and consequently legitimizes attacks against them.

18. The Special Rapporteur has been made aware of cases in which newspapers have directly incited homophobia or portrayed defenders working on lesbian, gay, bisexual and transgender rights as homosexuals. In one particular case, such defenders had to go into hiding, fearing for their physical safety and psychological integrity following the publication of their names and pictures in newspapers.

19. Stereotypical portrayals and insults have also been used against women defenders working on issues such as rape, domestic violence and female genital mutilation.

20. The Special Rapporteur calls upon non-State actors to respect all human rights, and, in that regard, she would like to outline the responsibility of non-State actors to respect human rights in accordance with the Declaration.

B. Responsibility of non-State actors to respect the rights of human rights defenders

21. At the outset, the Special Rapporteur would like to recall that non-State actors, including private companies, have an obligation to comply with national laws in conformity with international standards and norms. Consequently, non-State actors can be held accountable for violations of the rights of defenders amounting to offences or crimes under national law. In addition, the Human Rights Council, in its resolution 12/2, condemns "all acts of intimidation or reprisal by non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights".

Responsibility to respect the rights of human rights defenders

22. The Declaration reaffirms the responsibility of everyone not to violate the rights of others, encompassing the responsibility of non-State actors to respect the rights of human rights defenders. This is reflected in the preamble as well as in articles 11, 12.3 and 19 of the Declaration. This responsibility to respect human rights, including the rights of defenders, means that non-State actors should at all times refrain from curtailing the enjoyment of human rights by defenders. In other

[4] See E/CN.4/2006/95/Add.2, para. 87, and E/CN.4/2002/106/Add.1, para. 155.

words, all non-State actors, including armed groups, the media, faith-based groups, communities, companies and individuals should refrain from taking any measures that would result in preventing defenders from exercising their rights. On the contrary, non-State actors can, and should, play a preventive role by promoting the Declaration as well as the rights and activities of human rights defenders. All individuals, groups and organs of society should contribute to the effective promotion, protection and implementation of human rights.

Corporate responsibility to respect human rights

23. In relation to private national or transnational corporations, the Special Rapporteur refers to the responsibility of companies to respect human rights, as emphasized by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr. John Ruggie, in his report to the Human Rights Council (A/HRC/8/5), submitted in 2008. The Human Rights Council endorsed the Special Representative's policy framework for business and human rights, as elaborated in his report. The framework rests on the three principles of "protect, respect and remedy": the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The Human Rights Council later emphasized that transnational corporations and other business enterprises have a responsibility to respect human rights (see Human Rights Council resolution 8/7). Consequently, business enterprises also have a responsibility to respect the rights of human rights defenders.

24. The corporate responsibility to respect human rights (see A/HRC/14/27, paras. 54-78) is recognized in soft-law instruments such as the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, and it constitutes one of the commitments that companies undertake when joining the United Nations Global Compact.[5] The corporate responsibility to respect notably applies to the rights enshrined in the International Bill of Human Rights.[6] Therefore, the rights enshrined in the Declaration on human rights defenders, such as the right to security and liberty, freedom of association and freedom of opinion and expression, including access to information, must be respected by companies, whether national or transnational. Examples of alleged violations of those rights by companies are provided above.

25. The Special Representative also stated that discharging the responsibility to respect human rights required due diligence. This concept, which is derived from, but should be distinguished from, a State's due diligence responsibility, should be understood to mean that companies must ensure that their activities do not infringe upon the rights of others, including human rights defenders. This implies that companies should identify and prevent human rights violations against defenders that may result from their activities and operations. The Special Rapporteur would like to call upon companies to engage with human rights defenders while implementing the

[5] See the United Nations Global Compact's 10 principles, notably principles 1 and 2, available at http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html.

[6] The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

four components of the human rights due diligence standard, as elaborated by the Special Representative of the Secretary-General on business and human rights.[7]

26. In addition, companies should envisage incorporating a reference to the Declaration on human rights defenders into their corporate social responsibility and/or human rights policies. Transnational corporations should also systematically consider involving human rights defenders in their country assessment prior to undertaking any investment in a given State. Early and transparent discussions on the consequences of the activities of companies on the enjoyment of human rights in their areas of operation could prevent violations of the human rights of populations, communities and defenders. Such a participatory process would also contribute to an acknowledgment of the key role of defenders in the promotion of human rights, democracy and good governance. Transnational companies could also play a key role in influencing their national parent companies and overseas subsidiaries to adopt the same approach.

27. Transnational and national companies should also consider developing national human rights policies in cooperation with defenders, including monitoring and accountability mechanisms in case of violations of the rights of human rights defenders.

III. The responsibility of States for human rights violations by non-State actors

28. The responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights,[8] including those of human rights defenders.

29. Indeed, States are primarily responsible for the protection of human rights defenders and their rights, and the Special Rapporteur would like to recall that they should improve or develop specific protection programmes for defenders. In this connection, the Special Rapporteur would like to refer to the previous recommendations in that regard (see A/HRC/13/22). In the context of human rights violations by third parties, the obligation to protect, first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State's responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.

[7] See A/HRC/8/5, paras. 56-64, and A/HRC/14/27, paras. 79-86.

[8] For a definition of these obligations, see E/CN.4/Sub.2/1987/23, paras. 66-69.

A. State responsibility for acts of non-State actors under international law

1. State duty to protect defenders from human rights violations committed by third parties

30. The State's duty to protect the rights of defenders from violations committed by non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination.

31. As the Declaration on human rights defenders contains a series of principles and rights that are based on human rights standards enshrined in other legally binding international instruments such as the International Covenant on Civil and Political Rights, the State's duty to protect all human rights includes the protection of the rights of human rights defenders. Thus, for instance, the right to life, the right to privacy, and the rights to freedom of association and expression should be protected from violations not only by State agents, but also by private persons or entities. This duty, which should apply at all times, is provided for in the preamble to the Declaration as well as in its articles 2, 9 and 12.

32. In discharging their duty to protect, States parties to international and regional human rights instruments must implement the interim measures provided by international and regional human rights mechanisms, such as the precautionary measures granted by the Inter-American Commission on Human Rights, so as to prevent violations by non-State actors, including corporations.

33. In a recent case involving a transnational mining company, the Inter-American Commission on Human Rights requested that the concerned State suspend operation of a gold mine owned by a transnational corporation until the adoption of a decision on the merits of the petition associated with the request for precautionary measures. The State was also requested to adopt any other necessary measures to guarantee the life and physical safety of the members of the indigenous communities concerned and to plan and implement protection measures with the participation of the beneficiaries and/or their representatives, who should also be considered human rights defenders.[9] Despite the decision granting precautionary measures, leaders of the communities peacefully protesting against the perceived negative effect of the mining on, notably, their right to water have been threatened and attacked.

Due diligence principle

34. The principle of due diligence, as first articulated by the Inter-American Court of Human Rights in the case of *Velásquez-Rodríguez v. Honduras*, provides a way to

[9] Inter-American Commission on Human Rights, Precautionary measure 260-07, Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala.

assess whether the State has acted in fulfilment of its human rights obligations.[10] In relation to the Declaration, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation.

35. Examples of actions or omissions contravening the State duty of due diligence include failure to provide effective protection to defenders at risk who have documented attacks and threats by non-State actors or who have been granted interim protection measures by regional human rights mechanisms. In relation to the above-mentioned case,[9] despite the precautionary measures granted by the Inter-American Commission on Human Rights to the leaders of certain communities, information received by the Special Rapporteur indicates that violence against defenders continues. One of the community leaders of the movement against the mine was shot by unidentified men in July 2010. Failure to prevent violations of the rights of defenders may also include the removal of protection measures without due justification when the original threat is still present and the failure to investigate recurrent attacks and alleged violations against defenders.

36. Whenever States have not taken preventive measures, or when such measures have not proved sufficient to prevent the commission of violations of the rights of defenders by non-State actors, the State should carry out prompt, impartial and thorough investigations, prosecute the alleged perpetrators and provide the victim with reparations. Failure to take proper steps to investigate the alleged violations and to prosecute and try the perpetrator contravenes the principle of due diligence. It is of paramount importance that, in discharging this duty, States act in good faith.

Extraterritorial jurisdiction for human rights violations against defenders

37. In relation to transnational corporations, States have the duty to protect defenders against human rights violations committed by corporations within their jurisdiction. This duty first entails a duty to prevent human rights abuses against defenders by companies. States should at least take the appropriate legislative, administrative and judicial measures to prevent acts by transnational corporations registered in their countries that have a negative impact on the enjoyment of rights of defenders abroad. Furthermore, General Comment 19 of the Committee on Economic, Social and Cultural Rights, on the right to social security, could apply to violations committed against defenders, meaning that States could develop preventive mechanisms such as corporate social responsibility guidelines or policies and include not only references to international human rights standards, but also clear guidelines to protect human rights defenders.[11] These guidelines could include explicit references to: the Declaration on human rights defenders; the need for transparent consultation with defenders when carrying out a country assessment; the

[10] See Inter-American Court of Human Rights, Velásquez-Rodríguez case, Judgement of 29 July 1988, para. 172; and United Nations Human Rights Committee General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), para. 8.

[11] See E/C.12/GC/19, para. 54.

advantage of developing a national human rights policy in consultation with human rights defenders; and the acknowledgement of defenders' role in that regard.

38. The duty to protect also requires prompt and impartial investigation and the prosecution of alleged perpetrators. Thus, the development of State corporate social responsibility policies should also include monitoring and accountability mechanisms to remedy potential violations of the rights of defenders.

39. This duty should also be reflected in any existing guidelines on human rights defenders. For example, the objective of the European Union of influencing third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-State actors should be accompanied, as a corollary, with the objective of influencing companies within their jurisdictions to respect the rights of human rights defenders.[12]

2. State accountability for acts of non-State actors

40. International law on State responsibility could apply to violations of the fundamental rights of defenders committed by certain categories of non-State actors under particular circumstances. For example, pursuant to the draft articles on Responsibility of States for Internationally Wrongful Acts,[13] States may be held internationally responsible for violations of the rights of defenders, even though committed by non-State actors.[14] Accountability, however, must be determined on a case-by-case basis. The Special Rapporteur would like to emphasize one instance in particular.

41. Pursuant to article 8 of the draft articles on State responsibility,[15] acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility. One example of a situation might be the case of a State creating or equipping armed groups, such as paramilitaries or armed bands, and instructing them to attack human rights defenders. In this instance, paramilitaries could be considered de facto State organs, and the commission of acts in breach of international law against defenders could be attributed to the State.[16]

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[12] European Union Guidelines on Human Rights Defenders, para. 11, available at http://www.consilium.europa.eu/showpage.aspx?id=1706&lang=fr.

[13] See A/56/10, para. 77; these articles apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole.

[14] On the elements of an internationally wrongful act of a State, see article 2 of the draft articles on State responsibility.

[15] Article 8 of the draft articles on State responsibility provides that "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."

[16] See, for example, International Tribunal for the Former Yugoslavia, Appeals Chamber, *Prosecutor v. Tadic*, Judgment, 15 July 1999, para. 131; available at http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf.

B. Implementing the right to an effective remedy

42. One of the major and systematic concerns raised by defenders in relation to violations committed by non-State actors is the question of impunity. The Special Rapporteur would like to reiterate that ending impunity is a sine qua non condition for ensuring the security of defenders.

43. Information received by the Special Rapporteur shows that in many instances, complaints by defenders about alleged violations of their rights are either never investigated or dismissed without justification. In certain cases involving threats received by text message, for example, the telephone numbers of the senders (when known) have been transmitted to the police for further investigation. The information provided shows that in most cases, no proper investigation was carried out by the police.[17] Furthermore, in certain States affected by internal conflict, impunity has been unchecked with regard to cases of rape and the use of sexual and other forms of violence against women.[18] Consequently, the State's unwillingness to investigate violations committed by non-State actors is seen as granting those responsible free rein further to attack defenders with total impunity.

44. Pursuant to article 9 of the Declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of his/her human rights and fundamental freedoms. States therefore have a responsibility to ensure that human rights defenders whose rights have been violated are provided with an effective remedy. This obligation entails that the State ensures, without undue delay, a prompt and impartial investigation into the alleged violations, the prosecution of the perpetrators regardless of their status, the provision of redress, including appropriate compensation to victims, as well as the enforcement of the decisions or judgements. Failure to do so often leads to further attacks against human rights defenders and further violates their rights.

45. This right to an effective remedy is reflected in other human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 2(3) of the latter provides that States parties should ensure that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". It further states that States parties should ensure that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy". This obligation includes providing defenders with reparations.[19]

46. The Special Rapporteur concurs with the opinion of the Human Rights Committee that "failure by a State Party to investigate allegations of violations

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[17] See, for instance, summaries of individual cases raised by the Special Rapporteur on human rights defenders during 2009 and summaries of Government responses (A/HRC/13/22/Add.1 and Corr.1, paras. 696-703, and 1805).

[18] See, for instance, summaries of individual cases transmitted and replies received by the Special Rapporteur on human rights defenders during 2005 (E/CN.4/2006/95/Add.1 and Corr.1 and 2, para. 166).

[19] Human Rights Committee General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), para. 16.

could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy".[20] The Special Rapporteur would like to emphasize that States should also investigate threats committed against families and relatives of human rights defenders.

47. The right to an effective remedy also implies an effective access to justice, which should be understood as not only judicial but also administrative or quasi-judicial mechanisms. Investigation and prosecution should rest on an effective and independent judiciary. Unfortunately, in many instances, weaknesses in the judicial system and flaws in the legal framework have deprived defenders of adequate tools for seeking and obtaining justice.

48. States should take steps to ensure that violations against human rights defenders can be brought before tribunals or alternative complaints mechanisms such as national human rights institutions or existing or future truth and reconciliation mechanisms.

49. As mentioned by the Special Rapporteur on previous occasions, national human rights institutions could play a leading role whenever States' judicial systems are unable or unwilling to adjudicate on alleged violations against defenders. The Special Rapporteur would like to stress the important role that independent and effective national human rights institutions could play in handling complaints against non-State actors, including private corporations.

50. Whenever national human rights institutions are not able to address violations committed by private corporations, the possibility of amending their mandates so that they can receive and consider complaints of that nature should be envisaged. Such amendments should be discussed with defenders themselves to take into account the specific risks they encounter. National human rights institutions could also play a key preventive role in disseminating the Declaration to non-State actors and raising awareness about their responsibility to respect the rights of defenders.

IV. Conclusions and recommendations

51. **The Special Rapporteur hopes that the present report will contribute to raising awareness of the responsibility of non-State actors to comply with the provisions of the Declaration on human rights defenders. It is paramount that non-State actors acknowledge the important role of defenders in ensuring the full enjoyment of all human rights by everyone. Non-State actors, including private companies, could play a key role in the promotion and protection of the rights and activities of human rights defenders.**

52. **The Special Rapporteur remains concerned at the alleged unwillingness of certain States to investigate promptly and impartially violations against defenders committed by third parties. She once more urges States to protect human rights defenders effectively and ensure that all human rights violations committed against defenders are investigated and prosecuted, regardless of the status of the perpetrators. The Special Rapporteur would like to make the following recommendations.**

[20] Ibid., para. 15.

To all non-State actors

53. **Respect the rights of human rights defenders in accordance with the Declaration on human rights defenders.**

54. **Refrain from violating the rights of human rights defenders and hindering their activities at all times.**

55. **Promote the role and activities of human rights defenders.**

To national and transnational corporations

56. **Involve and consult with human rights defenders when carrying out country assessments.**

57. **Develop national human rights policies in cooperation with defenders, including monitoring and accountability mechanisms for violations of the rights of defenders.**

58. **Fully implement the recommendations of the Special Representative of the Secretary-General on business and human rights on the corporate responsibility to respect.**

59. **Act with due diligence and ensure that their activities will not infringe the rights of others, including human rights defenders.**

60. **Promote the role and activities of human rights defenders.**

To States

61. **Incorporate the Declaration on human rights defenders into domestic law.**

62. **Disseminate the Declaration not only among State agents but also to individuals, groups and organs of society and other non-State actors, including faith-based groups, the media, private and State-owned companies.**

63. **Respect and protect the rights of human rights defenders in accordance with the Declaration on human rights defenders.**

64. **Implement the interim measures of protection granted by international and regional human rights mechanisms to human rights defenders by, inter alia, taking immediate steps to provide them with appropriate protection.**

65. **Implement the recommendations on the improvement or establishment of specific protection programmes for defenders as elaborated in the Special Rapporteur's report on the security and protection of human rights defenders.**[21]

66. **Ensure prompt and independent investigation of all violations of the rights of defenders, the prosecution of alleged perpetrators regardless of their status, and provide victims of violations with access to justice and just and effective remedies, including appropriate compensation.**

67. **Take measures to ensure that public officials and law enforcement officers in charge of the prevention, investigation and prosecution of violations against**

[21] See A/HRC/13/22.

human rights defenders receive training on the Declaration and on the specific needs of protection of human rights defenders.

68. **Engage with national and transnational corporations operating under their respective jurisdictions to disseminate the Declaration and ensure that prevention and accountability mechanisms for human rights violations against human rights defenders are established.**

69. **Extend the mandate of their national human rights institutions to receive complaints against private companies.**

70. **Ratify and entrench in the domestic legal system the Statute of the International Criminal Court as well as the Agreement on Privileges and Immunities of the Court.**

71. **In cases where any non-State actors, particularly paramilitaries, attempt to stigmatize the work of human rights defenders through acts such as alleging their association with combatant or terrorist groups, publicly reaffirm the importance and legitimacy of the work carried out by human rights defenders.**

72. **Promote the role and activities of human rights defenders.**

To national human rights institutions

73. **Investigate complaints about human rights violations committed by non-State actors, including companies, whenever their mandates allow.**

74. **Disseminate the Declaration on human rights defenders among individuals, groups and organs of society and other non-State actors, including faith-based groups, the media, and private and State-owned companies.**

75. **Organize awareness-raising conferences and seminars on the corporate responsibility to respect human rights.**

To the International Criminal Court

76. **Take appropriate steps to ensure that crimes under international law committed by non-State actors and falling within its mandate are investigated and prosecuted.**

To human rights defenders

77. **Report all violations of their human rights to the relevant authorities.**

78. **Continue to submit complaints and/or communications to regional and international human rights mechanisms and national human rights institutions.**

79. **Monitor the above recommendations and communicate any violations to the Special Rapporteur on human rights defenders.**

To the Office of the High Commissioner for Human Rights

80. **Develop a comprehensive strategy to protect human rights defenders, including against threats and reprisals by non-State actors.**